



Update

Working Together for Families and Children

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The Educational Crisis of Children in the Juvenile Court System

Kathleen A. Kelly

This article is a summary of a more in-depth law review article that will appear in the Hastings Constitutional Law Quarterly.

In all the debate about the burgeoning number of youth incarcerated in our juvenile justice system or living in foster care because of abuse and neglect, few have recognized the growth of an immense insidious crisis: the overwhelming numbers of children—court dependents and delinquents alike—who suffer from educational deficiencies and disabilities.

The fact is that most of these children do not receive the special education and other educational services they

need. This problem is particularly acute for children and youth in out-of-home placement. Without intervention, most of these young people will graduate, not from high school, but to the public assistance and criminal justice systems. Given that the annual per-capita cost of incarcerating a ward in the California Youth Authority is now \$37,000, the price of ignoring these young peoples' educational needs is both morally and fiscally untenable.

How can we reverse this trend? First, we must acknowledge the urgency of the problem in the lives of these children.

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Landmark Legislation

ABUSED AND NEGLECTED CHILDREN GET LAWYERS

Jennifer Walter

The Judicial Council and its Center for Families, Children & the Courts (CFCC) hailed a key victory for children in California on September 13, 2000, when the Governor signed Judicial Council-sponsored Senate Bill 2160 (Stats, 2000, ch. 450), landmark legislation giving every abused and neglected child a voice in court. The new law mandates that every child in an abuse and neglect proceeding have attorney representation unless the court believes it would not benefit the child. In addition, the law prohibits the attorney for the petitioner (the agency alleging grounds for abuse and neglect findings) from also representing the child.

This victory was the culmination of the work of many experts in the field, including staff at the Judicial Council's Office of Governmental Affairs (OGA) and the CFCC. During the past year, the CFCC devoted many of its resources to focus policy efforts on the quality of child representation in California. In October 1999, the *Journal of the Center for Children and the Courts*, edited by Audrey Evje, devoted its first issue to the subject. An article by Jennifer Walter, supervising attorney at the CFCC,

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Special Education Law

Judge Candace Beason

Superior Court of California, County of Los Angeles

No longer is special education an issue that only occasionally arises in an education or civil rights case. More and more cases relating to a multitude of special education issues are being filed each year. Now judges in all types of assignments will be evaluating special education issues based on newly revised federal and state laws. Some examples are:

■ A family law judge deciding an acrimonious custody and visitation matter will need to be aware of special education issues. In making a decision, the judge will need to consider questions such as which parent is more knowledgeable or capable or likely to participate with school personnel in devising an IEP (Individual Educational Plan) for the child. What special needs does the child have? Will joint custody help or hurt the child in school? Will the parents be able to make decisions as part of the team?

■ When reviewing or approving a minor's compromise in a personal injury case, does the judge have sufficient information to adequately assess the case when the child has a disability that qualifies him or her for special education?

■ Delinquency and dependency court judges make decisions daily about whether or not a minor should be a ward of the court: Is the minor really a child who should be under the jurisdiction of the court? If so, which placement would best meet the special needs of the child? The judge needs to be aware that the court has the authority to join parties who have responsibility for providing appropriate educational and other services to the minor.

Studies have estimated that between 28 and 46 percent of delinquent children and approximately 20 to 25 percent of dependent children have at least one identifiable disability for special education purposes. Other studies place

the rate for delinquent children as high as 60 percent. No matter which figure is the more precise, children involved in the juvenile court process are at least twice as likely as the general population to be in need of special education.

All these scenarios described above are repeated across California on a daily basis. Some judges are knowledgeable about special education issues; most are not. Revisions to federal and state regulations concerning special education now make it imperative that judges educate themselves in this area. To that end, a proposed amendment to section 24 of the California Standards of Judicial Administration is currently being considered. The amendment would guide the court in considering the educational needs of children in the juvenile court process. A key component of the proposed amendment is that judges, attorneys, and other professionals in the courts would receive training in special education and applicable laws.

Until the amendment is approved, judges who encounter special education issues or regularly preside over juvenile matters would be well advised to begin familiarizing themselves with the regulations just promulgated in March 2000. New changes affect the role of the student, parent, teachers, and administrators. The "comments" that are attached to the regulations provide a helpful guide to the statutes, posing over 30 key questions and the U. S. Department of Education's responses.

California's statutory scheme is found at Education Code section 5600 et seq. Legislation to bring state laws into alignment with the Individuals with Disabilities Education Act was vetoed by Governor Davis in 1999 because of

concerns that the bill would "likely be found to create significant reimbursable state mandates." Urgency legislation is pending to resolve the discrepancies. The desired changes may take place as early as the end of the year. Both the state and federal laws have specific provisions setting forth the types of disabilities covered, the parties who should participate in formulating the IEP, the procedures that must be followed if there is a disagreement between the parent and the school, and

disciplinary procedures when a student is in special education. The law covers children with disabilities from ages 3 to 21. The range of children affected by the legislation requires that anyone working

with children have at least a minimal understanding of these laws.

A number of state and federal governmental agencies publish materials on the subject of special education. The 2000 edition of *California Special Education Programs: A Composite of Laws*, from the California Department of Education, contains all of the various code sections related to special education that appear in the Education Code and Welfare and Institutions Code. It also reports on the status of various bills that have recently passed, as does the department's Web site (www.cde.ca.gov/spbranch/sed/index.htm). Another valuable resource is the *California Juvenile Court Special Education Manual* by the Youth Law Center in San Francisco. It was written and published in 1994, so it does not incorporate the most recent statutory changes. However, one of the authors, Sue Burrell, recently co-authored an update for the Office of Juvenile Justice and Delinquency

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Special Education Law

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Prevention titled "Special Education and the Juvenile Justice System" (NCJ No. 179359) that is now available on OJJDP's Web site, www.ojjdp.ncjrs.org.

Underlying all special education and related laws is the notion that *all children* are entitled to a free and appropriate public education (FAPE). The parameters of what that entails are frequently left to the courts. Parents of disabled children are filing lawsuits to compel school districts to provide services. Parents of children who are not in special education sue school districts to enforce their children's right to a FAPE, claiming that limited educational resources are disproportionately being spent on special education to the detriment of the majority of students. Children who are wards of the court and convicted inmates up to the age of 21 who have received special education in the past are entitled to continued services while in placement or in custody. The courts, and judges in particular, need to begin the process of understanding the wide spectrum of cases that involve issues of special education law so that our decisions are the best we can make in any given case. ■

Judge Candace Beason is a Los Angeles Superior Court judge currently on a one-year educational sabbatical.



Landmark Legislation

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argued that the state was long overdue in fulfilling its promise to provide a lawyer independent of the petitioning agency to each child in an abuse and neglect case.

The prevailing national policy since 1974 has been that children in abuse and neglect cases should have independent representation. Under the Child Abuse Prevention and Treatment Act (CAPTA), federal law requires, as a condition of receiving federal funds, that states provide independent representation in every case involving an abused or neglected child that results in a judicial proceeding.* Until this year, California was one of only three states that permitted the child to be represented by the same attorney who represents the petitioning agency and thereby risked losing approximately \$5 million in CAPTA and Children's Justice Act funds.† Before passage of this law, some courts automatically appointed attorneys for children and watched attorney caseloads climb, while others sought to target appointments for selected children. As of January 1, 2001, the law's effective date, abused children will have the same rights to representation in all counties of the state.

In December 1999, Chris Wu, attorney at the CFCC, worked together with Dawn Kusumoto, staff counsel to the Senate Select Committee on Juvenile Justice, to organize a jointly sponsored public hearing titled "The Right of Abused or Neglected Children to Legal Representation in Dependency Court." The hearing was conducted by Senator Adam B. Schiff; Judge Michael Nash, co-chair of the Judicial Council's Family and Juvenile Law Advisory Committee; and Judge Leonard Edwards, Judicial Council member. Many experts testified, including Marvin Ventrell from the National Association of Counsel for Children; Michael Piraino from the national Court Appointed Special Advocate (CASA) program; Judge Terry Friedman, presiding judge of the Los

Angeles Children's Court; Jennifer Walter and other attorneys; CASA representatives; and foster-care children. In addition, OGA staff, most notably Lee Morhar, was instrumental in advocating for the passage of SB 2160.

Currently, local budgets for court appointed counsel are not determined by court size, but rather by funding levels predating the Trial Court Funding Act of 1997. Funding levels were set by individual counties and reflected huge disparities; until now, the AOC has been basically limited to these budget levels and has supported requests for additional funding based on caseload and rate increases. The state Department of Finance has turned down AOC requests for increased funding in this area time and time again because of the lack of statewide standards. Therefore, the law directs the Judicial Council, by July 1, 2001, to promulgate rules of court establishing caseload standards, training requirements, and guidelines for appointed counsel and CASAs in compliance with CAPTA.

The CFCC needs the help of local courts and legal service providers during this next year to develop these standards, trainings, and guidelines. The standards are crucial for two reasons. First, the standards will determine the quality of representation a child can depend on receiving from his or her attorney. Second, the standards will also dictate the level of funding allocated for court appointed counsel.

SB 2160 represents a historic opportunity: it can positively affect the lives of abused and neglected children in California by giving each an independent attorney. The challenge will be to ensure effective representation for all through the adoption of appropriate standards, including caseload standards, and the allocation of resources to adequately fund court appointed counsel. ■

*42 U.S.C. §§ 5106a(b)(6), 5106c(b)(1) (West Supp. 1992).

† Pennsylvania and Indiana do not receive CAPTA funds.

Educational Crisis

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Second, we must take advantage of the innovative programs and judicial remedies available to address the situation. Even then, these children need more. Fundamentally, these children need someone who will advocate for their educational rights. This article will describe the nature of this educational crisis and will discuss methods to avert it where children's educational rights can be most effectively enforced—in juvenile court.

DEPENDENTS OF THE COURT: FOSTER CHILDREN

The plight of children in the dependency system is sobering. In addition to dealing with the physical and emotional trauma of parental abuse or neglect, these children must struggle with numerous changes in their placement and their schools. In fact, foster children in California attend an average of 9 to 10 different schools by age 18. It is little wonder that these children demonstrate significantly lower achievement and lower performance in school. At the least, the issues they face at school range from the difficulties of making new friends and adjusting to new teachers to grappling with delays in enrollment and transfer of their records to problems with lost academic credits when they are moved mid-semester. Compounding these problems, they must also navigate through the various education, child welfare, mental health, and probation systems whose responsibility it is to implement the services they may need under an Individualized Education Plan (IEP), Student Study Teams (SST), or their court case plan.

Foster children receive special educational services at higher rates than the general population, yet there are frequently delays in delivery of services. While studies show that many of these youngsters suffer undiagnosed learning disabilities, others reveal that too often foster children are overidentified and

labeled as "special ed" or "problem kids." The simple truth is that these children who move from placement to placement and school to school fall behind and suffer academically. The statistics are telling: as many as 75 percent of foster youth perform below grade level; 50 percent have been retained at least one year in school; and more than 50 percent do not graduate from high school.

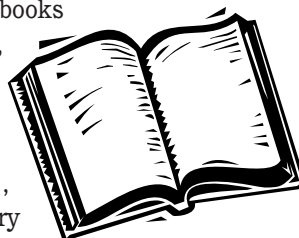
JUVENILE COURT DELINQUENTS

The statistics for youth in the juvenile delinquency system are no less troubling. As many as 50 percent of incarcerated youth have undetected learning disabilities, and up to 70 percent may qualify for special education programs. Large numbers of learning disabled youth drop out of school and end up in the criminal justice system. Adding to the problem, characteristics common to children with learning disabilities, such as difficulty in listening, thinking, and speaking, often lead to misinterpretation of their behavior, resulting in incarceration. As retired Santa Clara County Judge Read Ambler ironically puts it, "Can't read? Go to jail!"

Whether the issue is truancy, suspensions, or undetected learning disabilities, nearly all the youth in detention facilities have serious learning problems. Most of these young people will not graduate from high school, and, without intervention, they have few prospects for making it in this high-tech information-driven economy.

Yet when given the opportunity, many of these same youth are remarkably responsive. For example, young people detained in San Francisco's Juvenile Hall have shown tremendous enthusiasm for the new library project there. They request books

about poetry, mythology, art, history, science, Shakespeare, and even Harry Potter! The point



is that many of these youth, whether they are "special ed," "mental health," or drug addicted, want to learn. The professionals working with them need to do more to help them.

LEGAL FRAMEWORK

Statutory and case law provide ample authority that education services are an entitlement for children with disabilities. The Individuals with Disabilities Education Act (IDEA) requires that all eligible students receive a "free appropriate public education." (20 U.S.C. § 1400 et seq., Ed. Code, § 56000, as well as section 504 of the Vocational Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Education Act, which provide protection to children with disabilities). The law is also clear that school districts have an affirmative duty to "actively and systematically identify children with exceptional needs." (Ed. Code, § 56300.)

The educational rights set forth in IDEA basically confer rights to parents that are to be exercised on behalf of a child. Unfortunately, where these children are concerned, services are difficult to obtain. First, the statutory framework enumerating the full range of due process and substantive rights is a challenge to comprehend. For parents whose children are in the juvenile justice system, the task of understanding the laws and dealing with the agencies mandated to execute them is overwhelming. Another problem is that parents, particularly those whose children are in the dependency system, often are not available to advocate for their child's educational needs.

Systemic problems also play a role. As just one example, the strict timelines under IDEA are not in sync with the relatively short statutory mandates governing juvenile court hearings. Thus, the time frame for an IEP, which may be necessary for a minor's placement, is likely to exceed the statutory date for the minor's disposition. When a parent is not available and an educational surrogate

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must be appointed, there are often delays involved in terminating a parent's educational rights and designating an educational surrogate for a child. Even when a surrogate is appointed, that person may not have the time and tenacity it takes to obtain a timely IEP and advocate for the services necessary to meet a child's individual needs.

It is important to recognize that the educational challenges children in the juvenile court system face are not limited to "special education" issues. For example, a youth in a detention facility may be unable to get a GED or the academic credits necessary to maintain grade level. A foster child may not get enrolled in the school closest to a new placement for weeks. She may lack the records or verification of school credits necessary to complete high school or to enroll in college. If a child in a group home is lucky enough to have tutoring or other services to stay on track academically, that same young person is unlikely to obtain services in his next placement.

The California Constitution provides a potential vehicle to challenge such deficiencies in educational services. Indeed, the California Supreme Court has interpreted the education clause of the California Constitution to confer a fundamental-right status upon education. (*Butt v. State of California* (1992) 4 Cal.4th 668; *Serrano v. Priest* (1971) 5 Cal.3d 584.) While the case law to date has addressed the fundamental right to education in the context of school financing, the equal protection rationale should certainly apply to the disparate treatment suffered by children in the juvenile court system.

TRIAL COURTS' AUTHORITY REGARDING EDUCATIONAL SERVICES

Given the profound educational needs of children in both the foster-care and the delinquency systems, it is no surprise that it is often at the juvenile court-

house where the unaddressed problems of these children collide with the huge systems responsible for them—child welfare, juvenile probation, education, and mental health. Significantly, the role of juvenile court judges has come to incorporate the authority to mandate enforcement of these children's educational rights. Welfare and Institutions Code sections 202, 362(a), and 727(a) give the juvenile court the responsibility for the care and treatment of delinquent and dependent children. The court is empowered to make any and all reasonable orders for their care, including their educational needs. Juvenile court judges are also authorized to join in a juvenile court proceeding any agency that is not meeting its legal obligation to a child, such as the school district or mental health, and to make the orders necessary to compel the services on behalf of a child. (Welf. & Inst. Code, §§ 362(a) and 727.) Additionally, for the growing numbers of children "advancing" on the trajectory from the child welfare system to the juvenile delinquency system, the court can require the probation department and the welfare department to meet, assess the child's needs, and recommend the best plan for a minor. A minor's educational needs must be included in this assessment. (Welf. & Inst. Code, § 241.1.)

Effective January 2000, reunification and other services, including educational services, previously mandated for dependents, must now be provided to certain court delinquents. (See Welf. & Inst. Code, §§ 635, 652, 706.5.) Before a child's disposition is heard, a case plan must be submitted to the delinquency court, which identifies needed services (Welf. & Inst. Code, §§ 706.5, 706.6(j)). Here again, the court can make orders concerning educational services for a minor.

Last year, the number-one priority of the Juvenile Court Judges of California (JCJC) was a bill to ameliorate special education services for children supervised by the juvenile court (Assembly Bill 645, which ultimately was not

signed into law). This year, the JCJC is backing a similar measure, AB 2375.

There has also been significant leadership from the juvenile court bench to encourage collaborative efforts to improve educational services for these children. In Santa Clara County, the juvenile court has taken the lead in developing Project YEA and the Educational Rights Project to advocate for the timely implementation of special education services and placement for delinquent and dependent minors. Led by the juvenile court, Santa Clara has also established a Special Committee for the Education of Children of the Juvenile Court, a large collaborative convened to meet the educational needs of children in the juvenile justice system.

On a statewide level, one of the most successful collaboratives is the Foster Youth Services Program (FYSP). FYSP is an education-based program that links school districts with child welfare and probation departments to provide educational services such as tutoring, advocacy, assistance with records, and other services for children in foster care. FYSP has a documented success rate in decreasing truancy and improving academic outcomes for foster children. In 1999, the program was expanded statewide to children in group homes only. There is currently legislation pending to expand FYSP statewide for all children in foster care (Assem. Bill 2012).

Increasingly, the FYSP programs are recognizing the importance of partnering with their local juvenile courts. In San Francisco, for example, the juvenile court has played a critical role in the development of its FYSP program. In other counties, such as Riverside and Nevada, the courts have worked with FYSP to develop orders to facilitate the exchange of information between agencies working with foster children.

Juvenile court judges also have the authority to assign advocates to ensure these children obtain the services to which they are entitled. The Court Appointed Special Advocates (CASA)

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Caregivers and the Courts

In July 2000, the Center for Families, Children & the Courts, in collaboration with the National Center for Youth Law, was awarded a grant from the David and Lucile Packard Foundation to evaluate the effects of training foster parents and family-member caregivers about dependency court process and procedure and how to present information about children's needs at juvenile dependency hearings. The project, to be completed in four California counties, will address three research questions: (1) how training in the dependency court process affects caregivers' knowledge and attitudes about participating in court hearings and the likelihood that they will participate; (2) what factors determine how caregiver information is used in judicial decision making; and (3) what can be learned from case studies about the possible effects of caregiver participation on children's well-being.

The grant is part of the CFCC's Caregivers and the Courts Program, which is aimed at ensuring that information from caregivers about dependent children's needs is made accessible to judicial officers. Since passage of the Adoption and Safe Families Act (ASFA) by Congress in 1997, federal law requires that foster parents and family-member caregivers be given notice and the opportunity to be heard at any review or hearing to be held with respect to the child in their care. California law also addresses caregiver participation in dependency court hearings. As states implement the provisions of ASFA, information on how to train caregivers about the court process and appropriate ways to participate in it is in the early stages of development. The National Center for Youth Law is currently using instructional materials developed by CFCC program

staff in their caregiver training around the country.

The primary reason for including caregivers in dependency hearings is to facilitate the exchange of information about children that is important for their care. Caregivers may be an important source of information about children because they are in a unique position to know the nature of the care the child requires. They develop a rich, integrated perspective on the children and the children's progress because they routinely talk to children's pediatricians, teachers, therapists, and other

service providers. In addition, the direct communication between the caregiver and the court at the time services are ordered allow immediate planning for the delivery of those services. Parents also have an opportunity to develop a relationship with the caregiver and to work together to make decisions that support the return of their child home. This may ease the sense of isolation and the impersonal, bureaucratic aspects of having the juvenile court involved in their lives. An added benefit is that caregiver participation in court hearings may increase their satisfaction with their role, which in turn increases their willingness to continue caring for children. ■

For more information on the CFCC's Caregivers and the Courts Program, contact Regina Deihl, Juvenile Projects Attorney, 415-865-7739, regina.deihl@jud.ca.gov.

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program provides advocates appointed by the court to assist individual children in dependency cases. Given that a child in the juvenile court system may have multiple caseworkers or probation officers over the years, a dedicated CASA can provide the continuity and advocacy needed to advance a child's educational needs. Certain counties, such as San Bernardino, Contra Costa, and Marin, are even expanding CASA to assist in delinquency cases.

The Judicial Council's Center for Families, Children & the Courts recently launched an Educational Advocacy Project in Alameda County whose goal is to meet the educational needs of dependents through direct advocacy. The project has the direct involvement of the juvenile court bench. In San Francisco, the juvenile court now requires children's attorneys to have some basic training in special education. The court is exploring the development of a panel

of attorneys specifically trained in special education to represent children and advocate for their educational rights. These efforts mark an important recognition that children in the juvenile court system need skilled and consistent advocates to obtain the services to which they are entitled.

CONCLUSION

The problems concerning the educational needs of children in the juvenile court system are real and dire. The laws designed to protect these children are underutilized. Through advocacy, those working on behalf of dependent and delinquent children can ensure that they receive services they so desperately need. ■

Ms. Kelly was a senior trial attorney on the San Francisco City Attorney's dependency trial team for over 10 years. She is currently an adjunct professor at the University of San Francisco School of Law, where she teaches juvenile law. She is also president of the Volunteer Auxiliary of the Youth Guidance Center and chair of the San Francisco FYSP Steering Committee.

The CASA Infants and Toddlers Demonstration Project

BUILDING A SERVICE INFRASTRUCTURE FOR DEPENDENT INFANTS AND TODDLERS

*Mari Demera, Case Manager, CASA of Fresno County
Polly Franson, Executive Director, CASA of Fresno County*

Generally, Court Appointed Special Advocates (CASAs) assist abused and neglected children 10 years of age or older who have been removed from their homes and are involved in juvenile court proceedings. However, there is growing concern among many service providers that crucial developmental needs of younger children involved in the juvenile justice system are being ignored. As an expression of this concern, the length of the dependency period for children in this age group changed dramatically in January 1998, when the California Legislature amended Welfare and Institutions Code section 361.5(a), which reduced from 12 to 6 months the length of time a child under 3 years old could stay in foster care. Now, several CASA programs statewide are responding to judges' increased requests for CASA volunteers to assist young children by expanding their programs to include infant and toddler projects, including research and training.

In December 1998, CASA of Fresno County was one of four CASA programs statewide (Fresno, San Francisco, Santa Clara, and Imperial) to receive funding for a three-year Infants and Toddlers Demonstration Project funded by the Stuart Foundation. The initial purpose of the project was to measure the effectiveness of CASA programs in securing expedited permanency for children from birth to 36 months.

In each of the four counties the project is a collaboration of CASA, children and family services, and the juvenile dependency court. According to the project's guidelines, the courts agreed to refer dependent children to CASAs, and each CASA agreed to serve 30 infants

and toddlers per year for three years. Specifically, the volunteer would provide an in-depth independent investigation of the child's circumstances, help ensure that court-ordered services were provided, and advocate for the best interest of the child. The four county Departments of Children and Family Services agreed to provide a random-sample comparison group of infants and toddlers without CASAs. Though the initial statistics are not yet available, the project's effect in Fresno County has been remarkable: it has encouraged the development of several new initiatives in the county that are building an infrastructure of services for dependent infants and toddlers.

In Fresno County, the demonstration project revealed that services for dependent infants and toddlers were nonexistent, inadequate, or underutilized. In response, the CASA of Fresno County Infant and Toddler Program was developed. In addition to regular CASA advocate training, an extra 9 to 12 hours is required for those CASA volunteers who wish to advocate for children younger than 3 years old. The program is currently serving 65 infants and toddlers, of whom 30 are statistically counted in the demonstration project. The majority of these infants are drug exposed or have been born into environments that put them at risk both physically and psychologically. Many of the infants have multiple issues that make them medically fragile. Older babies come into the program after several placements and show signs of severe attachment disorder, loss, and grief.

Fresno County has begun several other programs to address the problems of young dependent children:

Infant and Toddlers Task Force.

With the support of the dependency court's judicial officers, CASA and the Fresno County Department of Children and Family Services (FCD-CFS) built a multidisciplinary task force of professionals from human services department units—Emergency Response, Concurrent Planning, Adoptions, Voluntary Family Maintenance, and county mental health. Also included in the task force are representatives of community agencies such as University Medical Center, Valley Children's Hospital, Exceptional Parents Unlimited, Central Valley Regional Center, LoriAnn Infant Program, Early Head Start, and California State University Foster Parent Training, as well as from foster parent support groups and public health nursing. The task force identified areas within FCD-CFS that lacked specific procedures to address the special needs of children younger than 3 years old. The participating organizations and divisions then modified their policies and procedures to include special provisions for children of that age group. The age for immediate CPS emergency response was changed from 0–2 years to 0–3 years so that CPS personnel immediately respond to any complaint or report regardless of the nature of the issue if the child is under 3. Within Voluntary Family Maintenance a separate unit was created in which the Comprehensive Infant Toddler Enrichment Project (CITE) trained staff to identify and refer medically fragile infants and toddlers to the appropriate providers. Homes that care for medically fragile children were reassessed to determine whether or not they were proficient to accept

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CASA Infants and Toddlers Project

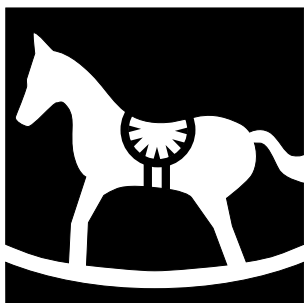
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emotionally fragile and drug-exposed infants, and foster parents interested in caring for the most fragile and at-risk infants and toddlers began receiving special training. Additionally, these specialized caregivers are now being supported by nutritionists, respite caregivers, in-home visits by specialists in behavior modification, and special parenting instructors in order to maintain the infants' placements and to reduce the occurrence of multiple caregivers. Many resources and treatment facilities within the community—some that separately focus on the children or the caregiver and several in which caregivers and infants and toddlers interact—have been identified and are being utilized for referral by FCDCCFS and the courts. Social workers are also beginning to receive training in infant mental health issues and the effects of multiple placements.

Infant Mental Health Team. Fresno County has developed a mental health program of six clinicians who are assigned to work with infants and toddlers in the dependency system. Services include assessments, evaluations, and treatment, much of which is done in the children's homes.

Infant and Toddler Treatment Team. This team of specialists in infant and toddler mental health, developed as a result of the task force, focuses on the identification of the most serious cases and creates family-based treatment plans with follow-up. The majority of cases are identified and referred by CASA of Fresno County.

An additional service spin-off includes a private infant mental health psychologist providing pro bono treatment with both the reunifying parents and temporary caregivers of a complicated CASA case involving a medically fragile 9-month-old girl.



In an unrelated undertaking, one year after beginning the demonstration project, CASA of Fresno County commissioned a Placement Pattern Research Project in collaboration with California State University, Fresno; University of California, San Francisco; and the California School of Professional Psychology. The goal of the study is to identify quantitative indicators that describe the level of disruption associated with multiple foster placements and compare specific quantitative outcome variables

of CASA cases to non-CASA cases. The limited results to date indicate that a child's current age in combination with the age of initial detention significantly predicts the total number of placements far better than the duration of foster care. In other words, the older a child at entry into the foster-care system, the more placements he or she will experience. The Placement Pattern Research Project included both older children and infants and toddlers. In fact, the majority of children in the infant and toddler project (104 total CASA cases) were included in the research project. Interestingly, one indicator suggests that the number of changes in placement appear to be reduced when a CASA is assigned to an infant. This may be because the majority of infant and toddler cases referred to CASA of Fresno are being referred very early in the dependency process, at detention or jurisdiction, which allows the CASA, social worker, and mental health specialists to immediately stabilize the child's placements through the efforts of the above-mentioned agencies and services.

Beginning this year, all California counties have set up Proposition 10 committees to ascertain their priorities in spending millions of dollars in tax revenue as a result of the 50-cent-per-pack tobacco tax. By law, they must

spend these dollars on services for children 5 years old and younger. With the Proposition 10 windfall in each California county, funding to begin a project, program, and services targeting infants and toddlers is potentially available. CASA programs in Kern and Alameda Counties have already been granted Proposition 10 dollars to start infant and toddler programs to begin to address potential attachment issues, learning disabilities, and delinquency problems.

In Fresno County, this special focus on infants and toddlers has created a new infrastructure of services for fragile young children primarily because of the cooperation and collaboration of the dependency court, social services system, and CASA. Armed with countywide program successes, these organizations plan to expand services to infants and toddlers in keeping with their collective vision of helping all young dependent children in need. ■



New CFCC Employee

The Center for Families, Children & the Courts is pleased to welcome **Aleta Beaupied**, a new attorney working with the Judicial Review and Technical Assistance (JRTA) team. Aleta has 18 years of experience representing children in high-conflict custody disputes and children and parents in abuse and neglect proceedings. She also has expertise in special education. Before practicing law, she was a teacher in the public schools. Aleta enjoys hiking in her spare time. ■

RESEARCH GRANT AWARDS FOR 2000

The Research Grant Program of the Center for Families, Children & the Courts has awarded support of \$35,000 to each of three new interdisciplinary projects. The projects will review current literature and empirical studies from the fields of sociology, psychology, education, and law about specific needs of children and families. The goal of each project is to derive from the literature implications for court practice to aid the courts in making decisions about children and families. Documents summarizing the work are anticipated in June 2001.

For additional information, please call Andrea Lash at 415-865-7741 or e-mail her at andrea.lash@jud.ca.gov.

PROJECT: Parenting After Violence: What Children Need From Parents for Positive Development and Functioning

ORGANIZATION: Child Trauma Research Project, University of California at San Francisco

INVESTIGATORS: Alicia Lieberman, Ph.D.; Patricia Van Horn, J.D., Ph.D.

DESCRIPTION: Children who have been exposed to family violence or who have experienced violence may have special parenting needs. Through a review of literature the project will identify information to aid courts in making decisions in the best interest of these children. The review will focus on the ways family violence affects children at various developmental stages and what children at each stage need from their relationships with parents and other caregivers to help restore them to a optimal developmental trajectory. The investigators also will examine research into the effects of family violence on the parents themselves and on the ways that living in a violent household affects parenting. The project will offer recommendations for parents, caregivers, teachers, attorneys, and court professionals to aid children who have been exposed to family violence.

PROJECT: Parenting After Violence: Strategies for Intervention

ORGANIZATION: MINCAVA – Minnesota Center Against Violence & Abuse, University of Minnesota – Twin Cities

INVESTIGATORS: Jeffrey L. Edleson, Ph.D.; Lyungai F. Mbilinyi, M.S.W.; Sudha Shetty, J.D.

DESCRIPTION: This project will provide juvenile and family court personnel with research-based information to assist them in making decisions for family safety. Critical literature and empirical studies will be reviewed and interpreted in light of court decisions. Of central focus will be research on the effectiveness of interventions that courts might recommend for families. Several print and online documents will be created to present this information. Documents will include reviews of best practices in intervention with parents following an incident of child maltreatment and/or adult domestic violence in the home.

PROJECT: Educational Needs of Children Involved in Family and Juvenile Court Proceedings

ORGANIZATION: Mental Health Advocacy Service, Inc.

INVESTIGATORS: Lois Weinberg, Ph.D.; Nancy Shea, J.D.; Andrea Zetlin, Ed.D.; Jan Costello, J.D.

PURPOSE: Decisions made in family and juvenile courts affect the lives of children, including their schooling and access to educational services. These decisions range from the placement of children in out-of-home care to arrangements for child custody and visitation after parents separate to placement in youth or other detention centers. Through a review of literature the project will help court professionals and judicial officers understand the educational system and the ways that court decisions can influence children's access to resources for learning and development. ■

JUDICIAL COUNCIL CREATES PROBATION SERVICES TASK FORCE

The Judicial Council has just appointed a Probation Services Task Force to assess California's programs, services, organizational structures, and funding related to the probation services provided by counties to the courts, probationers, and the general public. The task force will identify, analyze, and prepare a report of findings and recommendations to the Judicial Council, the California State Association of Counties (CSAC), the Governor, and the Legislature regarding probation services in Fall 2001.

The task force includes members appointed by CSAC, the Chief Justice, chief probation officers, and representatives from the statewide probation officers association. Justice Patricia Bamattre-Manoukian of the Sixth Appellate District was appointed by the Chief Justice as a nonvoting chairperson. All participating entities will be able to give input to the task force prior to the report's submission to the council, the Legislature, the Governor, and the general public. The Administrative Office of the Courts will provide staff support for the project.

The task force will address broad issues relating to probation, including:

- ◆ Identifying and evaluating current practices and options for probation services;
- ◆ Identifying the nature and scope of probation services provided by counties to the courts, probationers, and the general public;
- ◆ Identifying and evaluating current practices and options for the delivery of probation services;
- ◆ Identifying and evaluating various organizational structures for adult and juvenile probation services;
- ◆ Identifying and evaluating practices of other jurisdictions with regard to

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Probation Services Task force

Continued from page 9

range of probation services and levels of funding; and

◆ Identifying the appropriate relationship between probation services and the courts.

As with all Judicial Council committees and task forces, the role of this task force will be to formulate findings and policy recommendations for the Judicial Council. Staff will be assigned to support the efforts of the task force, including logistics, preparing information, and determining how best to collect and prepare information to respond to questions for the task force as well as to support task force deliberation. For further information regarding the task force, call Ms. Audrey Evje at 415-865-7739 or e-mail her at audrey.evje@jud.ca.gov. ■

NOVEMBER IS Adoption Month

Angela Gaylord

In 1999, the Judicial Council, the Administrative Office of the Courts, the Governor, and the Legislature joined in proclaiming November Adoption and Permanency Month.

As of March 31, 1999, 547,000 children were in foster care in the United States. In California alone, 106,000 children are still in out-of-home care. In an effort to streamline the permanency process, the Judicial Council of California is encouraging counties across the state to dedicate time and resources to adoption during Court Adoption and Permanency Month.

At the state level, a permanent resolution has been passed by the Judicial Council, and the Legislature and Gover-

nor will join in proclaiming November 2000 Court Adoption and Permanency Month.

Each county develops its own programs for Adoption Month. In Amador County the court and TSPN cable channel presented a televised forum on August 15 in which a family court judge, a foster parent, a social services representative, and an adult who was a foster child discussed the realities of the adoption process. Last November, community members in Alameda County read names of adoptable children throughout its day-long "It Takes a Community" program sponsored by the Oakland Adoption Providers, a consortium of Black Adoptions, Placement, and Research Center and Family Builders, to raise public awareness about adoptions, recruit adoptive parents, and attract media attention. The ceremony was followed by a candlelight vigil.

Where adoption backlog remains a concern, counties are using Adoption Month celebrations to finalize adoption proceedings. Los Angeles, for example, will hold its ninth Adoption Saturday on November 18. Nearly 2,500 adoptions in Los Angeles County have been finalized on Adoption Saturday through the volunteer efforts of judges, attorneys, bailiffs, law students, and community volunteers. At the suggestion of Los Angeles County Judge Michael Nash, Dallas, New York City, Washington, D.C., Chicago, and Columbus, Ohio, will also hold Adoption Saturday events on November 18. Last year, the media and California's Supreme Court Chief Justice George joined in the festivities.

Adoption Day in Fresno County is held at a ranch. There are some adoption finalization proceedings, but the day is also planned as a celebration for all the adoptive families and the

children who were adopted throughout the year. In Sacramento County, Adoption Day takes place at the courthouse. Last year, Sacramento initiated new events to make this day a success. Each adopted child made a handprint on a piece of ceramic tile, then the tiles were arranged together and now hang in the new Sacramento courthouse. Court officials also instituted a Beanie Baby adoption program in which each newly adopted child got to choose a Beanie

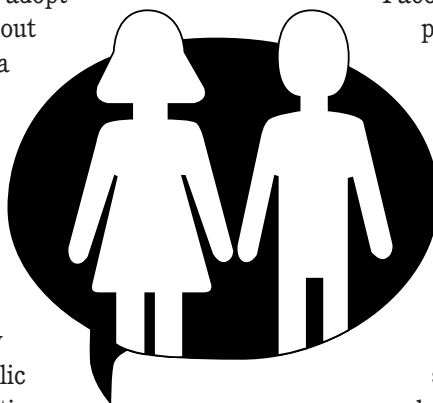
Baby in the courtroom to take home.

Face painting and clown performances added to the celebration.

Each of these programs addresses a different issue: public awareness, limited programming, or extensive backlog. In your community, look at the statistics to determine where the program needs to be strengthened. If many children

are waiting for an adoption to be finalized, then an Adoption Day activity may be helpful. But if there are children waiting to be adopted but no adoptive parents, an adoptive parent recruitment activity fits the needs of the county best. This November, let's not only help spread awareness of the need for adoptive parents, but also celebrate the birth of new families.

The Center for Families, Children & the Courts has developed a technical assistance packet describing programming that may be used during Court Adoption and Permanency Month or throughout the rest of the year. The packet has been sent to all juvenile courts in California. If you did not receive the packet and would like one, please contact the CFCC at 415-865-7739. ■



CFCC to Host Juvenile Delinquency Conference

The Judicial Council Center for Families, Children & the Courts (CFCC) has received funding from the State Justice Institute (SJI) to host the Juvenile Delinquency and the Courts conference from Thursday, January 25 through Saturday, January 27, 2001, at the San Diego Holiday Inn on the Bay. Invitations to the conference will follow the county team structure, with the team captain of each county selecting the 10 team members.

The purpose of the Juvenile Delinquency and the Courts conference is to conduct a coordinated review of youth problems and incarceration patterns in California and to develop a comprehensive intervention plan. While juvenile delinquency has always generated attention, recent years have seen a wave of public awareness of juvenile crime. The conference occurs at a crucial time, when it can respond to the current need of California courts for practical, effective, and coordinated

approaches to the handling of juvenile delinquency cases.

The conference will be structured as educational workshops and opportunities for teams to meet and work together. It will encourage participation, interaction, and the development of positive, concrete outcomes in the form of specific action plans to be implemented by each county in California. The conference will follow eight tracks, each comprising four workshops. The tracks are Court and Community, The Roots of Violence, Special Cases, Gender and Race, Children in the System, Prevention and Punishment, Restorative Justice, and Violent Youthful Offenders/Accountability.

Plenary speakers for this conference include Hon. Susan Carbon, Superior Judge of the Grafton County Court Family Division (New Hampshire); Hon. Bill Lockyer, California Attorney General; and Mr. Dennis Maloney, Director, Deschutes County Community Justice (Oregon).

One of the most important goals of the conference is the creation of a juvenile delinquency team, or working group, for each county. These teams can benefit the courts directly by bringing home not only new knowledge, motivation, and professional resources, but also written county action plans. This team approach is based on a proven model for local action and statewide coordination on the topic of domestic violence—a model that the Judicial Council has adopted. We aim to replicate this effective and dynamic model to address the pressing need for new ways of thinking about and tackling juvenile delinquency.

Juvenile delinquency affects our entire court system and our communities. Our judiciary deals with the effects of juvenile delinquency on a daily basis. The outcome of the conference should enable each county to make great strides toward meeting the California courts' improvement goals. For further information about the conference, call

Annual Educational Training Institutes

SPONSORED BY THE CENTER FOR FAMILIES, CHILDREN & THE COURTS

SOUTHERN AND CENTRAL COAST FAMILY COURT SERVICES REGIONAL TRAINING

October 26-27, 2000
Marquis Hotel, Palm Springs

FAR NORTHERN FAMILY COURT SERVICES REGIONAL TRAINING

November 2-3, 2000
Mount Shasta Resort

BAY AREA FAMILY COURT SERVICES REGIONAL TRAINING

November 16-17, 2000
Holiday Inn Bay Bridge, Emeryville

BEYOND THE BENCH XII

December 6-8, 2000
Sheraton Universal Hotel,
Universal City

JUVENILE DELINQUENCY AND THE COURTS: A CALIFORNIA STATEWIDE CONFERENCE

January 25-27, 2001
San Diego Holiday Inn

FAMILY LAW FACILITATOR TRAINING IN CONJUNCTION WITH FAMILY SUPPORT COUNCIL TRAINING

February 20-23, 2001
Palm Springs



FOR ADDITIONAL INFORMATION ON DATES AND LOCATIONS, PLEASE CALL 415-865-7741 OR 865-7739



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Director's Corner

This is the first of a regular column by CFCC Director Diane Nunn that will focus on issues of importance to children, families, and the courts.

How many children are in the California court system? Unfortunately, that's a question we can't answer right now. We do know that children are parties, witnesses, or the subject of a variety of court proceedings—juvenile dependency, mental health, family law, delinquency, status offenses, domestic violence, paternity, child support, guardianship, adoption, emancipation, traffic, civil, and criminal. However, we do not know how many children there are or who they are.

We do not know how many children are under the jurisdiction of the juvenile court for child abuse and neglect, criminal offenses, or status offenses. We therefore do not know how many of those children are dependents of the juvenile court because of neglect, abuse, or a combination of the two. Nor do we know how many children are wards of the juvenile court because of specified offenses. How many are repeat offenders? How many were waived to adult court? How many had previously been dependents of the juvenile court?

Who are these children—our children? What are their ages, their backgrounds, their histories? Do they belong to sibling groups? Are they involved in protracted child custody proceedings? Do they repeatedly witness violence at home? Are they being raised by the juvenile court, spending most of their lives moving from one foster home to another? Are they or their families in multiple court proceedings? Do proceedings involving children and families make up 10, 20, or 50 percent of the court workload? We do not know.

The judicial system is charged with providing fair and accessible justice for all. In order to do that, we must know whom we are serving. Informed decision making is the cornerstone of a fair and just judicial system, whether in an individual case or in the aggregate. It is therefore imperative that we know how many children are in the courts. We cannot allocate resources in an informed manner if we don't know the types of cases in our court system. Without this information, how can we as a society establish good policy?

The future need not be so bleak. Recently, the Judicial Council adopted its operational plan for fiscal years 2000–2001 through 2002–2003. Included in that plan, under Goal IV, Quality of Justice and Service to the Public, is the following objective: "Expand access and fairness for children who are before the court or affected by court proceedings." In furtherance of that objective, the council will be working to collect adequate data describing the characteristics and the numbers of children before the California courts by June 2003. Improved technology, a new statewide data collection system, and recent federal legislation may begin to provide us with the tools to gather that information. However, to be successful in achieving this outcome, we—all of us who work in the courts—must make this effort a priority in the judicial system. If you have suggestions, please let us know. We welcome your input.—Diane Nunn

Delinquency Case Summaries

CASES PUBLISHED FROM MAY 1, 2000, TO JULY 20, 2000

***In re Melvin J.* (2000) 81 Cal.App.4th 742 [96 Cal.Rptr.2d 917]. Court of Appeal, Second District, Division 5.**

The juvenile court sustained a petition that a 16-year-old child violated Penal Code section 245(a)(1) when he committed a felony assault with a weapon. Subsequently, because the child violated his probation, the juvenile court lifted a stay of commitment and ordered the child to be transported to the California Youth Authority (CYA).

The child was a member of a gang and was involved in an altercation at a pool hall with another gang. He hit a member of the other gang in the head with a pool cue and was charged with assault with a deadly weapon. The child was placed on house arrest probation in which any violation would result in a sentence to CYA.

At the disposition hearing, the juvenile court stated that it would impose a commitment to CYA but would stay the commitment because the child appeared to be doing well at home and school. Days after the hearing, the child broke the windows of his brother's car with a metal object and the windows of his mother's house with a brick. The mother called the probation officer, and the matter was set days later for a violation-of-probation hearing. At the conclusion of the evidentiary hearing, the juvenile court lifted the stay and sent the minor to CYA. The minor appealed, contending that the juvenile court erred (1) at the original disposition hearing, when it failed to consider the most recent probation report; (2) when it stayed the commitment to CYA; (3) when it failed to consider the psychiatric report at the section 777(e) hearing; and (4) when it conducted the hearing pursuant to former section 777(e) instead of former section 777(a).

The Court of Appeal considered each of these contentions and determined that the child could not raise issues relating to the original disposition hearing because he did not specifically appeal the order, and even if he had properly raised these contentions on appeal, the juvenile court committed no error. The appellate court affirmed the original dispositional order because the juvenile court did not err when it conducted the hearing without the latest probation report. The juvenile court also correctly stayed the commitment to CYA because the child appeared to be doing well at home and at school and the only additional information contained in the latest probation report was that the court should perhaps give the child another chance. Most important, however, the juvenile court did commit error by not making findings required under section 777(a) before lifting the stay of commitment to CYA.

On March 7, 2000, California voters approved Proposition 21, which amended the Welfare and Institutions Code, adding section 777, specifically removing section 777(e), and amending section 777(a). The juvenile court in this case handled the matter under section 777(e).

Under former Welfare and Institutions Code section 777(a), a court could not lift a stay of a CYA commitment unless, when considering a supplemental petition, it determined that the child did commit a violation and it proceeded to (1) hold an evidentiary hearing, (2) decide if on the whole record the prior dispositional order had entirely failed, and (3) determine if a more restrictive level of confinement was necessary for the child's rehabilitation. Here, the juvenile court found that the violation had occurred but made no other findings.

The appellate court was guided by the case of *Carmell v. Texas* (1999) ___ U.S. ___ [120 S.Ct. 1620; 2000 Daily Journal D.A.R. 4521], which upheld four categories of ex post facto principles that cannot be applied to conduct occurring before their effective dates. At issue was the fourth category, which states that a law violates ex post facto principles if it alters the legal rules of evidence and requires less or different testimony than the law required at the time of the commission of the offense in order to convict the offender. Because the new version of Welfare and Institutions Code section 777(a) deletes some of the requirements of the former 777(a) and allows commitment to CYA on less or different evidence, the new version violates ex post facto principles and cannot be utilized on remand. The failure of the court to make the appropriate findings under former Welfare and Institutions Code 777(a) was prejudicial, and a hearing on remand was ordered. The lifting of the stay of CYA commitment was reversed. The Court of Appeal also determined that the failure of the court to obtain and consider the psychiatric report was moot since a new hearing would be held on remand.

***In re Giovanni M.* (2000) 81 Cal.App.4th 1061 [97 Cal.Rptr.2d 319]. Court of Appeal, Second District, Division 5.**

The juvenile court adjudicated a child as a ward upon his admission to acts violating Penal Code section 246.3, unlawful discharge of a firearm with gross negligence (count 2) and Penal Code section 12101, unlawful possession by a minor of a firearm capable of being concealed upon the person (count 3). The child was also charged with Penal Code section 245(a)(2) and sections 12022.5(a) and (d) (assault with a firearm and personal use of a firearm in the commission of the offense). The child and two other people were chasing two men. The child shot four shots from a handgun in the direction of the two men. The police responded to the shooting

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Delinquency Case Summaries

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and detained the fleeing child. Pursuant to his admission agreement with the district attorney, the child was committed to the California Youth Authority (CYA) for the maximum aggregated period of five years and two months.

The child appealed, claiming that the juvenile court erred in sustaining count 3 because it was a necessarily included offense of count 2 and that the juvenile court violated Penal Code section 654 (double punishment) when it imposed two consecutive terms for both count 2 and count 3.

The Court of Appeal affirmed the decision of the juvenile court. The juvenile court had dismissed the most serious of the charges, the assault charge. When the child chose to avoid a longer sentence by admitting counts 2 and 3, the child waived the right to claim that the juvenile court was precluded from sustaining the petition on count 3. The child had received the benefit of his bargain and should not be allowed to "trifle with the courts" by trying to better his bargain through the appellate process. The appellate court determined that count 3 is not a necessarily included offense because count 2 can be committed without committing count 3. It is possible to commit a discharge of a firearm that is not concealable, and this commission would not violate count 3. Therefore, the appellate court agreed with the juvenile court's decision to sustain both counts. Also, the child waived any right to raise for the first time on appeal a claim under Penal Code section 654, when he agreed to accept a more lenient maximum term than he might have received had he not entered into an agreement. The agreement resulted in the dismissal of enhancement allegations and more serious charges. Therefore, the appellate court rejected the child's contention.

***In re Pedro M.* (2000) 81 Cal.App.4th 550 [96 Cal.Rptr.2d 839]. Court of Appeal, Second District, Division 2.**

The juvenile court adjudicated a child a ward after he admitted to committing a violation of Penal Code sections 288(a) and (b)(1) and 459 (committing a forcible lewd act upon a child under 14 years old and second-degree commercial burglary.) The juvenile court ordered the child to cooperate in a plan for psychiatric and psychological testing and treatment and to be suitably placed subject to probation conditions. The child refused to comply with the treatment plan, which included attendance at a sexual offender program that the court recommended. The state filed a supplemental petition under Welfare and Institutions Code section 777(a) alleging that the placement was ineffective after 18 months and that the child should be committed to the California Youth Authority (CYA). The juvenile court found at the adjudication hearing that the child had failed to comply with his treatment plan and had violated probation, and therefore the court ordered him to be committed to CYA for the maximum period of 11 years and 8 months. The juvenile court did not specify the number of days of predisposition credit the child had accrued. The child appealed, claiming that (1) there was insufficient evidence to support the juvenile court's findings, and that the court erroneously admitted testimony of his psychotherapist after he had invoked the psychotherapist-client privilege; (2) the juvenile court abused its discretion by committing the child to CYA; and (3) the juvenile court failed to determine the child's accrued predisposition credits.

The Court of Appeal affirmed the juvenile court's order to sustain the supplemental petition and to commit the child to CYA. The case was remanded, however, for the juvenile court to calculate the child's predisposition credits.

Regarding the privilege issue, the appellate court stated that the juvenile court's ability to assess the child's success in the sexual offender program would be diminished without feedback from the child's psychotherapist. Disclosure of confidential communication between a patient and psychotherapist is permitted when the disclosure is reasonably necessary for the accomplishment of the purpose for which the therapist was consulted. (Evid. Code, § 1012.) The appellate court concluded that the disclosure of the information sought by the juvenile court was permitted under section 1012. Because the therapist did not testify regarding any advice given to the child, the child's specific statements, or any diagnosis given, the psychotherapist's testimony concerning the child's participation and progress in the court-ordered treatment plan did not infringe upon the psychotherapist-client privilege. The psychotherapist's testimony regarding the child's failure to progress through the sexual offender program and his dishonesty warranted a finding that the child had violated his probation conditions.

The child's commitment to CYA based on his failure to progress in a well-reputed sexual offender program was appropriate. The appellate court remanded the case to the juvenile court to calculate the amount of precommitment custody credit to which the child was entitled, to amend the commitment order reflecting the calculated credit, and to forward a copy of the commitment order to CYA.

***In re Eduardo D.* (2000) 81 Cal.App.4th 545 [97 Cal.Rptr.2d 38]. Court of Appeal, Second District, Division 5.**

The juvenile court declared a child a ward of the court under Welfare and Institutions section 602 when the child committed grand theft. The child approached another boy and began a fight by punching the boy in the face.

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Delinquency Case Summaries

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The child threw a radio player at the boy's head and hit the boy in the head with a metal rod. When the boy was able to get away and began running, his cap and backpack were left on the ground. The juvenile court ordered that the child be placed in a juvenile camp and ordered that the child not be held in physical confinement for a period exceeding three years. The child appealed, claiming that there was insufficient evidence for the juvenile court to find that he had committed grand theft and that the juvenile court had failed to determine whether the grand theft was a felony or a misdemeanor.

The Court of Appeal affirmed the decision of the juvenile court and remanded the case for the juvenile court to determine if the theft was a felony or a misdemeanor. Grand theft is committed when property is taken from the person of another. (Pen. Code, § 487). The child in this case argued that the boy had left his backpack and cap when the boy began running away from the child. The backpack and cap were 10 to 15 feet from the child when he took possession of the items. The appellate court reasoned that the boy did not leave his items voluntarily; he left the backpack and cap as a direct result of the child's assault. Even though the boy

ran away from his items, this did not constitute abandonment. Welfare and Institutions Code section 702 states that the juvenile court must declare an offense as a felony or misdemeanor. In this case, the juvenile court did not indicate on the record whether the theft constituted a felony or a misdemeanor, and it did not indicate awareness of its discretion to make this determination. Although the appellate court suggested that a felony charge was probably appropriate, it remanded this decision to the juvenile court.

***In re Randy G.* (2000) 80 Cal.App.4th 1448 [96 Cal. Rptr.2d 338]. Court of Appeal, Second District, Division 3.**

The juvenile court adjudicated a child a ward of the court for violating Penal Code section 626.10 (possessing a locking-blade knife on school grounds.) A school security officer found the child and a friend congregating in a prohibited area. Upon seeing the security officer, the child began acting nervous and fixed the protruding lining in his pocket. Shortly after the child returned to class, the security officer and a second security officer requested to see the child outside of his class. The second security officer asked to check his pockets and the child consented. A locking-blade knife was found in the child's pocket. The child contended that there was no reasonable suspicion of criminal activity, he was detained unlawfully, and the knife was required to be suppressed. The child appealed, claiming that the knife seized by the security officers was obtained in violation of his Fourth Amendment rights.

The Court of Appeal affirmed the juvenile court's denial of the motion to suppress the knife and the juvenile court's order. A search of a student must be based on reasonable suspicion that the student has engaged or is engaging in an activity that is violative of a school rule or criminal statute. (*In re William G.* (1985) 40 Cal.3d 550 [221

Cal.Rptr.118].) The appellate court discussed the issue of detention and held that an officer may detain a student if the officer has a reasonable suspicion that the student has been or is engaging in criminal activity. Students and staff of primary and secondary schools have an inalienable right to attend safe and secure campuses. The appellate court determined that the child's violation of the school rule prohibiting congregation in certain places, in conjunction with his nervous reaction and fixing of the protruding lining in his pocket, yielded a reasonable suspicion justifying the child's detention. The knife was lawfully seized after a consensual search. Therefore, the child's Fourth Amendment rights had not been violated, and the motion to suppress the knife was correctly denied.

***In re Kenneth H.* (2000) 80 Cal.App.4th 143 [95 Cal.Rptr.2d 5]. Court of Appeal, Third District.**

The juvenile court denied a child's motion for specific enforcement of a plea agreement. The child was charged with violating Penal Code section 597(a), inflicting cruelty upon an animal. Before the contested hearing, the child entered into an agreement with the deputy district attorney (D.A.) that if he passed a polygraph examination, the prosecutor would dismiss the case, and if the child failed the examination, the D.A. would admit the charge as a misdemeanor. The child passed the polygraph examination. The D.A. proceeded with the trial, and the child moved for specific enforcement of the agreement. The juvenile court denied the motion and sustained the charge of a misdemeanor that included a drug search probation condition. The child raised the following issues on appeal: (1) the drug search condition was improperly opposed, and (2) the juvenile court erred in allowing the People to renege on the plea agreement. The state

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